

State Vs. Jagannath

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Court : Rajasthan

Decided On : Oct-18-1955

Reported in : AIR1956Raj63; 1956CriLJ418

Judge : Bapna and; Sharma, JJ.

Acts : Indian Arms Act, 1878 - Sections 13, 14 and 19

Appeal No. : Criminal Appeal No. 21 of 1953

Appellant : State

Respondent : Jagannath

Advocate for Def. : H.S. Sahai, Adv.

Advocate for Pet/Ap. : R.A. Gupta, Deputy Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Bapna, J.

1. This is an appeal by the State against the acquittal of the accused who was prosecuted under Section 19, Indian Arms Act for contravening the prohibition laid down by Section 13 of the Act.

2. The facts of the case are simple and are not disputed. The accused was seen carrying a muzzle loading gun in the bazaar of Bari town by Sub-Inspector Abdul Rashid on 2-5-1952. The Sub-Inspector asked him if he had a license and on his replying in the negative he took possession of the gun. On the butt of the gun there was a brass plate on which the following words were engraved: 'Gwalior Police 802'. The accused was challenged in the Court of the Extra Magistrate, Dholpur on the allegation that he was going armed without a license and had contravened the provisions of Section 13, Indian Arms Act and was, therefore, liable to punishment under Section 19(e) of the same Act.

3. The accused admitted the possession, of the gun but led defence to prove that he was a Chowkidar of village Janvoda in Madhya Bharat and the gun had been granted to him by Sub-Inspector, Police Station, Kalaras. D. W. 2 Kedarnath, Head Constable, Police Station, Kalaras proved with reference to the report; in the Police Roznamcha that the particular gun No. 802 was the property of the Madhya Bharat Government and had been given to the accused on 17-10-1950 for discharging the duties of a Chowkidar.

4. The learned Extra Magistrate acquitted the accused on the ground that he was a public servant and, therefore, the provisions of the Indian Arms Act were not applicable under the Saving Clause (b) of Section 1 of the Act. The State has come in appeal.

5. The applicability of the Indian Arms Act is not excluded in the present case because although the accused was a public servant, it has not been shown that the possession of the gun was in the course of his duties as such public servant. Nevertheless it is to be seen whether the accused has committed any offence under the Arms Act. He was charged under Section 19 (e) of the Act. Section 19(e) makes it an offence to go armed in contravention of the provisions of Section 13, and Section 13 prohibited a person from going armed with any arms except under a license and to the extent and in the manner permitted thereby.

6. There is a difference of opinion as to whether carrying of arms per se amounts to going armed within the meaning of Section 13 of the Act.

7. The Allahabad High Court in -- 'Emperor v. Harpal Rai', 24 All 454 (A) held that the essential of the offence is the going armed, that is, carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arises. The case related to a pistol which was in need of repairs and was being carried by a friend for the purpose of getting it repaired. It was observed how a pistol which was in need of repairs could be seriously looked upon either as a weapon of offence or defence.

8. The same view was taken by the Madras High Court in the case of -- 'Sonaimuthu Ambalam v. Emperor', AIR 1925 Mad 585 (1) (B) and it was held that the offence of going armed with fire-arm is considerably more narrow than the offence of being in possession merely of firearms. The expression 'going armed' clearly indicates two things, namely, firstly an intention to use it as a fire-arm and secondly the possibility of using it. In that case there was only one empty cartridge in the weapon and no cartridges were found on the person of the accused, and it was observed that this alone would show that in the circumstances under which he was found to be in possession of the fire-arm, it could not be possible for him to use the weapon as a firearm. It was said that there must be some clear evidence of intention on the part of the accused to use the weapon and in the absence of any evidence whatever bearing on the intention of the accused to use it as a fire-arm, the conviction could not be sustained.

9. The Bombay High Court in more than one case approved of the dicta in the Allahabad case and it was observed that the essential of the offence of going armed was carrying a weapon with the intention of using it as a weapon when the necessity or opportunity arose. Reference may be made to the following cases. 'Manjubhai Gordhandas v. Emperor', AIR 1929 Bom 283 (C) and -- 'Emperor v. Abdul Hafiz Hassan', AIR 1948 Bom 173 (D). The facts in each case were different but the same criteria was applied.

10. A different view was expressed by the Nagpur High Court in -- 'Emperor v. Gajraj Singh', AIR 1937 Nag 213 (E) which followed the Sind case -- 'Emperor v. Mahomed Punjal', AIR 1925 Sind 177 (2) (F). It was observed that a person who carries about a gun without any ammunition can be said to go 'armed' and that any

other interpretation would open the way to evasion of the law by carrying caps or cartridges secretly or in the keeping of a companion. We are of opinion that the mere carrying of an; arm would be punishable as a breach of Section 14; of the Act for being in possession of an arm; without a license and, therefore, going armed must necessarily mean something more than merely carrying arms. With great respect, we agree with the view taken by the High Courts of Allahabad, Bombay and Madras. What has been proved in the case is that the accused was carrying a muzzle loading gun. There is no evidence of there being any ammunition with the accused or any other fact from which an inference can be drawn that he had the intention of using the gun when the necessity or opportunity arose.

11. While we do not agree with the reasons given by the learned Extra Magistrate, the order or acquittal passed by him is maintained inasmuch as it had not been proved that the accused was going armed with the gun within the meaning of Section 13, Indian Arms Act. As stated above carrying of arms is something different from going armed with any arm.

12. The appeal by the State is hereby dismissed.

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